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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,995	03/25/2004	Soenke Mannal	CH920030018US1	7759
7590	02/06/2008			
DOUGLAS W. CAMERON Intellectual Property Law Dept. IBM Corporation P.O. Box 218 Yorktown Heights, NY 10598			EXAMINER	
			ROSE, KERRI M	
			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			02/06/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/808,995	MANNAL ET AL.	
	Examiner	Art Unit	
	Kerri M. Rose	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 November 2007.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 12 and 13 is/are allowed.

6) Claim(s) 1,5-7,10 and 14-16 is/are rejected.

7) Claim(s) 2-4,8,9,11,17 and 18 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 11, filed 11/23/2007, with respect to the rejection(s) of claim(s) 1, 6-9, and 14-16 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of new reference Lyon et al. (US 6,333,917).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 5 recites the limitation "the first manipulation rate" in line 10. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 10 recites the limitation "the fourth manipulation rate" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6, 7, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lyon et al. (US 6,333,917).

8. In regards to claim 1, Lyon discloses receiving data packets; identifying packets that are marked; determining a pattern rate; and determining the actual manipulation rate. Figure 5 illustrates a marking rate generator. This generator determines the rate at which packets should be marked. This fits with the definition of an actual manipulation rate given on pages 7 and 8 of the specification since the generator decides either how many of the arrived packets will be manipulated per unit time. Figure 6 illustrates that the generator operates with feedback. This feedback is equivalent to a congestion reaction pattern rate.

9. In regards to claim 6, Lyon discloses a first manipulation rate dependent on the load (figure 6 elements 80-84 indicates the generator takes the load into account).

10. In regards to claim 7, Lyon discloses determining the arrival rate wherein the load is dependent on the arrival rate (inherent. As packets flow through the switch the load varies depending upon the relationship between arrival rate, queueing, and dequeuing.)

11. Claims 14 and 16 are rejected upon the same grounds as claim 1. Figure 4 discloses a system for operation of the method. The system is a switch or router, which uses a processor. The processor must have computer readable instructions in order to function.

12. In regards to claim 15, Lyon discloses a switch or router in figure 4.

Allowable Subject Matter

13. Claims 12 and 13 are allowed.

14. Claims 2-4, 8, 9, 17, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 5, 10, and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kerri M. Rose whose telephone number is (571) 272-0542. The examiner can normally be reached on Monday through Thursday, 7:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



DORIS H. TO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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